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Attorneys for Defendants

PACIFIC BELL TELEPHONE COMPANY

dba AT&T CALIFORNIA, FMR LLC, SEDGWICK

CLAIMS MANAGEMENT SERVICES, and AON

HEWITT BENEFIT PAYMENT SERVICES LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

CHARLOTTE ERNSTING, an
individual,

Plaintiff,

vs.

PACIFIC BELL TELEPHONE
COMPANY, a California corporation,
dba AT&T California, HELMSMAN
MANAGEMENT SERVICES, LLC;
AT&T INC.; FMR LLC; SEDGWICK
CLAIMS MANAGEMENT
SERVICES, INC.; AON HEWITT
BENEFIT PAYMENT SERVICES
LLC; and DOES 1 through 11,
inclusive,

Defendants.

Case No. 8:15-cv-1682-JVS-KES

**DEFENDANTS PACIFIC
BELL TELEPHONE
COMPANY, FMR LLC,
SEDGWICK CLAIMS
MANAGEMENT SERVICES,
INC., AND AON HEWITT
BENEFIT PAYMENT
SERVICES' NOTICE OF
MOTION AND MOTION TO
DISMISS [Fed. R. Civ. P.
12(b)(6)] OR TO STRIKE [Fed.
R. Civ. P. 12(f)] AND FOR
MORE DEFINITE
STATEMENT [Fed. R. Civ. P.
12(e)]**

Date: December 7, 2015

Time: 1:30 P.M.

Courtroom: 10C

Judge: Hon. James V. Selna

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that at 1:30 PM on December 7, 2015, or as
3 soon thereafter as the matter may be heard, in the courtroom of the Honorable
4 James V. Selna, United States District Court Judge for the Central District of
5 California, located at the Santa Ana Courthouse, Courtroom 10C, on 411 West
6 Fourth Street, Santa Ana, CA 92701, Defendants Pacific Bell Telephone
7 Company, FMR LLC, Sedgwick Claims Management Services, Inc., and
8 Hewitt Associates LLC, incorrectly named as AON Hewitt Benefit Payment
9 Services (the “Non-Helmsman Defendants”) move for an order dismissing the
10 Complaint pursuant to the Federal Rules of Civil Procedure 12(b)(6) or to
11 strike pursuant to Federal Rule of Civil Procedure 12(f), or in the alternative,
12 for an order for a more definite statement under Rules 10 and 12(e). This
13 motion is made on the following grounds:

14 Plaintiff’s first, second, third, fourth, fifth, sixth, and seventh causes of
15 action fail to state a claim upon which relief may be granted on the grounds of
16 ERISA preemption (29 U.S.C. § 1144(a)), workers’ compensation preemption
17 (Cal. Lab. Code §§ 3600(a), 3602(a)), the testimonial privilege (Cal. Civil
18 Code § 47), and because they are not pleaded with the specificity required by
19 law. Fed. R. Civ. P. 8, 9(b), 12(b)(6).

20 Each of Plaintiff’s causes of action is improperly pleaded and should be
21 dismissed; or, if the Court determines that Plaintiffs’ claims are only partially
22 preempted the preempted portions of the complaint should be stricken:

- 23 - ERISA-preempted allegations: 4:9-11; 4:13-18; 4:23-24; 5:4-7; 5:10-
24 16.
25 - Workers’ compensation-preempted allegations: 4:12; 4:16-18; 4:25;
26 5:8-9.

27 In the alternative, Plaintiff should be ordered to provide a more definite
28

1 statement. Fed. R. Civ. P. 12(e).

2 This motion is based upon this Motion, the accompanying
3 Memorandum of Points and Authorities, the records and files in this action,
4 any argument that may be given and/or requested at the hearing, and any and
5 all other matters this court deems necessary.

6 This motion is made following the conference of counsel pursuant to
7 L.R. 7-3 which took place on Thursday, October 22, 2015.

8
9 Dated: October 27, 2015

10
11 PILLSBURY WINTHROP SHAW
12 PITTMAN LLP
13 PAULA M. WEBER
14 MARLEY DEGNER
15 STEPHEN E. BERGE

16 By /s/ Paula M. Weber
17 Paula M. Weber
18 Attorneys for Defendant
19 PACIFIC BELL TELEPHONE
20 COMPANY dba AT&T
21 CALIFORNIA, SEDGWICK CLAIMS
22 MANAGEMENT SERVICES, and
23 AON HEWITT BENEFIT PAYMENT
24 SERVICES LLC
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